

(b) Any data base list of gangs and registrants or individual registrants kept and maintained by the management organization representing employers of longshoremen and checkers in the Port of New York District, or by the labor organization representing longshoremen and checkers in the Port of New York District, or by a joint board of the management and labor organization, must reflect a registrant's waterfront commission eligibility status. Unless otherwise authorized in writing, said status shall only be entered into the data base by commission employees at a data base terminal designated by the commission.

7.42 Recording of Telephone Calls; Monitoring by Commission.

All telephone calls to and from the THEIC in connection with all phases of the telephone hiring system operation shall be recorded and all said recordings made by the New York Shipping Association, Inc., the International Longshoremen's Association or by a joint board of the New York Shipping Association, Inc. and the International Longshoremen's Association, shall be retained for a period of six months under the sole custody and control of the commission. The commission may review and abstract said recordings in any manner. The commission may also monitor, in any manner, any and all incoming or outgoing telephone calls concerning the telephone hiring system operation.

PROHIBITED CONDUCT

7.43 Unauthorized hiring and solicitation of employment.

(a) No person shall, directly or indirectly, hire any person for work as a longshoreman or checker within the Port of New York District, except through employment information centers established by the commission. No person shall accept any employment as a longshoreman or checker within the Port of New York District, except through such employment information centers.

(b) No person shall report for or solicit employment at any pier or terminal without having previously been selected and validated for employment through an employment information center. No gang foreman or any other person shall instruct or advise any person to report for or solicit employment at any pier or terminal prior to that person's selection and validation through an employment information center.

7.44 Unauthorized participation in hiring.

Except as specifically provided in section 7.20(b), no person shall participate or attempt to participate in any way, directly or indirectly, in the identification, selection or designation of a person for any list or roster established by the commission pursuant to these Regulations or for employment as a longshoreman or checker, or of a gang for employment, except a licensed hiring agent, his superior or a person for whom permission is granted by the commission upon appli-

cation of his employer and for whom appropriate identification has been issued.

7.45 Unauthorized conduct in employment information centers.

(a) No persons except licensed and registered persons shall have access to the employment information centers without approval from the commission. It shall be the policy of the commission to grant to representatives of management and the union permission to observe the hiring.

(b) No person shall in or upon any area, stairway or other appurtenance of an employment information center, sell or offer for sale any article of merchandise; conduct or solicit any business or trade; solicit alms, funds or contributions for any purpose; or post, distribute or display signs, advertisements, circulars, printed or written matter.

(c) No person shall gamble, conduct or engage in any game of chance in or upon any area, stairway or any other appurtenance of an employment information center.

(d) No person shall deface, mark, break or otherwise damage any part of a center or any property therein, or create a disturbance in or about a center or do any act or thing which shall create a nuisance in or about a center.

(e) No person who is unable to give a satisfactory explanation of his presence shall loiter in or about any lavatory area, stairway or other appurtenance or an employment information center.

(f) Except in any area designated by the commission as a smoking area, no person shall smoke or carry a lighted cigarette, cigar or pipe in or upon any area, stairway or any other appurtenance of an employment information center.

(g) Any permission granted by the commission, directly or indirectly, expressly or by implication, to any person or persons to enter upon or use an employment information center or any part thereof is conditioned upon acceptance of and compliance with the provisions of this section.

7.46 Tampering with THS.

(a) No person shall directly or indirectly tamper with or utilize any telephone, computer, monitor, record, transaction log, document, tape, disk, report, data or equipment pertaining to the THS with intent to deceive or defraud the commission, the New York Shipping Association, Inc., the International Longshoremen's Association, a joint board of the New York Shipping Association, Inc. and the International Longshoremen's Association or any other person.

(b) No person shall intentionally tamper with, alter in any manner, or destroy any computer equipment, computer program, computer data or computer material utilized in connection with the THS.

PART 8

REGULARIZATION OF EMPLOYMENT OF
LONGSHOREMEN AND CHECKERS
(DECASUALIZATION)

(Statutory authority: New York L.1953, ch.882,
art. IV, § 7; New Jersey L.1953, ch.202)

Section

- 8.1 Removal from register for failure to work or be available for work
8.2 Audit of availability for work
8.3 Notice before final removal
8.4 Requirements for reinstatement after removal from register

Section 8.1 Removal from register for failure to work or be available for work.

(a) To qualify for retention in the commission's "deep sea" register, a person included in such register must work as a longshoreman or as a checker, or make himself available for work in accordance with the provisions of paragraph (b) below, a minimum of 90 days in each half-calendar year, distributed at least 15 days to each month during at least five of the six months in each half-calendar year. In administering this section, receipt of compensation by any such person pursuant to the guaranteed wage provisions of any collective bargaining agreement relating to longshoremen and/or checkers shall be counted as constituting actual work, provided that such is received as a result of compliance with the provisions of paragraph (b) below.

(b) A registrant may make himself available for work by telephoning the THEIC between the hours of 4:00 P.M. and 8:00 P.M. on the prior day for orders. Those registrants who do not receive orders for the next day shall be available between the hours of 8:00 A.M. and 9:00 A.M. on the next day (except Saturday, Sunday or Holidays) for telephone orders.

(c) To qualify for retention in the commission's "A" register, a person included in such register must appear on the current roster of an employer of such persons. Any such employer shall submit to the commission, at least once a year at a time designated by the commission, a roster of persons it employs or intends to employ.

Historical Note

Sec. amds. filed: June 29, 1966; Oct. 10, 1966; Apr. 29, 1968; Aug. 22, 1969; Nov. 17, 1969 eff. Nov. 30, 1969. New sec. substituted.

8.2 Audit of availability for work.

(a) The commission may conduct audits, daily or otherwise, to insure that registrants are or have been available for work within the meaning of section 8.1(b). The results of any such audit may be entered in the THS data base.

(b) The association representing employers of longshoremen and checkers and the labor organization representing longshoremen and checkers in the Port of New York District,

or a joint board of such association and labor organization, shall furnish the commission with any and all information necessary for the commission to properly perform the audits referred to in paragraph (a) above.

(c) Any audit performed by telecommunications system controllers shall be recorded in writing and furnished to the commission. The results of any such audit shall be entered into the THS data base. The audit sheet shall specify the registration number of the particular registrant contacted, whether the registrant was available or unavailable for work and any appropriate comments, and shall be signed by the person conducting the audit.

8.3 Notice before final removal.

(a) No person shall be removed from the "deep sea" register pursuant to article IX and section 5-c of the Act and this Part except upon two weeks' notice of his failure to accrue the minimum number of days required by this Part.

(b) No person shall be removed from the "A" register except upon two weeks' notice of his failure to appear on any current roster of registrants submitted pursuant to section 8.1(c).

Historical Note

Sec. amds. filed: Oct. 10, 1966; Nov. 17, 1969 eff. Nov. 30, 1969. New sec. substituted.

8.4 Requirements for reinstatement after removal from register.

(a) Any person removed from the "deep sea" longshoremen's register pursuant to article IX and section 5-c of the Act and this Part may seek registration upon fulfilling the same requirements as for initial inclusion in such register, provided applications for registration are then being accepted by the commission pursuant to section 5-p of the Act and provided further that at least one year has expired from the date of removal, except that immediate reinstatement shall be made upon a proper showing that the registrant's failure to work or apply for work the minimum number of days required by this Part was caused by the fact that the registrant was engaged in the military service of the United States or was incapacitated by ill health, physical injury, or other good cause. In the event such failure to work or apply for work the minimum number of days required by this Part was caused by the fact that the registrant was incarcerated, such registrant may be reinstated provided he applies for such reinstatement within one year after the termination of such incarceration. Any reinstatement under this section shall not preclude a proceeding to revoke, cancel or suspend the registration of any such person reinstated to the register nor the temporary suspension of such registration under the provisions of article XI of the Act.

(b) No petition for reinstatement shall be accepted from any person seeking reinstatement unless the person is

sponsored for employment by a stevedore or by any person, within the meaning of those terms contained in the Act, who is an employer of individuals requiring a registration or a license under the Act and where proof of sponsorship has been received by the Commission, prior to submission to the Commission of said petition, in the form of a letter submitted by the sponsoring employer.

(c) Any person removed from the "A" register may seek registration upon fulfilling the same requirements as for initial inclusion in such register except that where reinstatement is sought within one year of removal from the said "A" register, the commission may, in its discretion, waive said requirements.

Historical Note

Sec. amds. filed: Oct. 10, 1966; Dec 29, 1975 eff. immediately.

Sec. amds. filed May 1, 2007 eff. May 1, 2007.

8.4

Historical Note

Sec. deleted, filed Oct. 10, 1966 to be eff. immediately.

PART 9

ASSESSMENTS

(Statutory authority: New York L.1953, ch.882, art. IV, § 7; New Jersey L.1953, ch.202)

Section

- 9.1 Gross payroll payments
- 9.2 Filing of assessment returns and payment of assessments
- 9.3 Computing gross payroll payments paid to certain licensees
- 9.4 Extension for filing return or paying assessment
- 9.5 Failure to file return and filing incorrect return
- 9.6 Notice of deficiency; petition for hearing

Section 9.1 Gross payroll payments.

As used in this Part, the term *gross payroll* payments shall include all amounts paid or credited to longshoremen, checkers, pier superintendents, hiring agents or port watchmen, whether as "wages", "hourly rate", "traveling expense" (other than amounts paid to cover actual transportation costs, vacation and holiday payments or guaranteed annual income (GAI) payments.

9.2 Filing of assessment returns and payment of assessments.

Every employer of persons working as registrants or licensees shall, on or before the 15th day of January, April, July and October immediately following any calendar quarter during which such employer has made any gross payroll payments to such registrants or licensees, file with the commission at its main administrative offices an assessment return on a form which may be obtained from the commission and pay the assessment then due, based upon the rate as fixed by the commission.

9.3 Computing gross payroll payments paid to certain licensees.

For the purpose of computing gross payroll payments, salaries and other compensation of corporate officers and other persons of equivalent managerial authority who hold licenses as pier superintendents or hiring agents and who perform such licensed functions only in emergency or other unusual conditions may, upon submission of adequate evidence, be included only to the extent that such compensation does not exceed \$10,000 per annum.

9.4 Extension for filing return or paying assessment

The commission, upon a showing of good cause, may grant a reasonable extension of time for filing an assessment return or for the payment of any assessment. Any application for such extension must be made prior to the due date. As a condition of granting an extension of time for filing a return, the commission may require the submission of a tentative return and the payment of the assessment based on such tentative return.

9.5 Failure to file return and filing incorrect return.

If in the opinion of the commission the return of any employer is incorrect, the commission may revise such return and may audit and state an account according to such revised return for the amount due from such employer for the assessment, penalties and interest. If an employer fails to make a return, the commission may estimate his gross payroll payments from any information available to it. For this purpose, the commission may examine the employer's books and records, take testimony, require other evidence, and audit and state an account according to such information of the amount due from the employer for the assessment, penalties and interest. Nothing in this section is intended to or shall be construed to limit the investigating or auditing powers of the commission under the Act.

9.6 Notice of deficiency; petition for hearing.

(a) Whenever a deficiency in payment of the assessment is determined, the commission shall give notice thereof to the employer. Such determination shall finally and conclusively fix the amount due, unless the employer shall, within 30 days after the giving of notice of such determination, petition in writing to the commission for a hearing, or unless the commission on its own motion shall reduce the same. A petition for such hearing shall be verified and contain the following information:

1. the name and address of the employer, license number, if any, the period covered by the deficiency and the date of the deficiency notice; and
2. the grounds upon which the petition is based and each error of fact alleged to have been made by the commission in its determination, together with the facts and arguments in support thereof.

(b) The commission, or its designated hearing officer, shall fix the time and place of the hearing on any petition upon at least five days' notice. The conduct of the hearing shall be governed, in so far as applicable, by the provisions of Part 6 of these Regulations.

PART 10

PUBLIC LOADING

(Statutory authority: New York L.1953, ch.882, art. IV, § 7; New Jersey L.1953, ch.202)

Section

- 10.1 Persons permitted to load or unload waterborne freight for compensation.
 10.2 Persons not included as employees.
 10.3 Coercive tactics to require loading and unloading services prohibited.

Section 10.1 Persons permitted to load or unload waterborne freight for compensation.

(a) No person shall solicit, collect, receive or contract for any fee or other compensation for the loading or unloading of waterborne freight onto or from vehicles other than railroad cars at piers or at other waterfront terminals within the Port of New York District unless:

- (1) such person, or his employee, shall actually perform the loading or unloading services; and
- (2) such person is
 - (i) a carrier of freight by water, but only at piers at which its vessels are berthed; or
 - (ii) any other carrier of freight (including, but not limited to, railroads and truckers), but only in connection with freight transported or to be transported by such carrier; or
 - (iii) an operator of a pier or other waterfront terminal (including railroads, truck terminal operators, warehousemen and other persons), but only at a pier or other waterfront terminal operated by it; or
 - (iv) a shipper or consignee of freight, but only in connection with freight shipped by such shipper or consigned to such consignee; or
 - (v) a stevedore licensed under article VI of the Act, whether or not such waterborne freight has been or is to be transported by a carrier of freight by water with

which such stevedore shall have a contract of the type prescribed by subdivision (d) of section 3 of article VI of the Act.

(b) Nothing herein contained shall be deemed to permit any such loading or unloading of any waterborne freight at any place by any such person by means of any independent contractor, or any other agent other than an employee, unless such independent contractor is a person permitted by this Part to load or unload such freight at such place in his own right.

10.2 Persons not included as employees.

As used in this Part, the term *employee* shall not include a person who:

- (a) offers himself for employment solely to perform such labor, or is employed for the sole purpose of performing such labor; or
- (b) is selected or hired for employment for such labor at or in the vicinity of piers or other waterfront terminals; or
- (c) is paid other than a weekly, daily or hourly wage, with appropriate deductions for federal withholding and social security taxes for such labor; or
- (d) shares in fees collected by his employer for such loading or unloading services; or
- (e) is not recorded on the payrolls of the employer for whom he performs such labor in the same manner as other employees; or
- (f) is not subject to the direct and immediate supervision of his employer in the performance of such labor; or
- (g) uses or leases to his employer to perform such loading or unloading services, equipment (such as escalators, hi-los, fork trucks, cranes, etc.) owned by him, directly or indirectly, in whole or in part.

10.3 Coercive tactics to require loading and unloading services prohibited.

No person shall, directly or indirectly, by the use of force, threats, intimidation or other coercive tactics require or attempt to require the utilization of his or any other person's services to perform the loading or unloading services specified in section 10.1.